

CITY OF TALLAHASSEE**CITY COMMISSION AGENDA ITEM**

ACTION REQUESTED ON:	November 22, 2005
SUBJECT/TITLE:	Approval of Revisions to the Existing Welaunee Urban Services Development Agreement and New Contract of Purchase and Sale with Powerhouse, Inc. for the Purchase by the City of 428 Acres of Welaunee
TARGET ISSUE:	

STATEMENT OF ISSUE

On September 8, 2004, the City Commission approved a conceptual agreement with Powerhouse, Inc., negotiated by Commissioner Allan Katz, to provide a route for the Eastern Transmission Line. The agreement provides an opportunity to locate portions of the Eastern Transmission Line and a proposed substation on Welaunee; and, in addition, for the City to purchase through a bargain sale approximately 428 acres of Welaunee. (**Attachment 1**) The terms of the approved conceptual agreement include certain requirements that have been incorporated into revisions to the 1990 Urban Services Development Agreement between the City and Powerhouse, Inc., (**Attachment 2**), and a new Contract of Purchase and Sale (**Attachment 3**), both of which are before the City Commission for approval. If the two documents are approved, staff will continue working with Powerhouse to finalize the route for the Eastern Transmission Line and a site for Substation BP17, as well as closing on the purchase of the Welaunee property.

RECOMMENDED ACTION

Approve Option 1. Approve the Amended and Restated Urban Services Development Agreement between the City and Powerhouse, Inc.; approve the Contract of Purchase and Sale between the City and Powerhouse, Inc.; and authorize the City Manager and City Attorney to make any necessary minor modifications to the documents and to execute any documents necessary to finalize and close on the City's purchase of the 428 acres parcel in the Welaunee Toe and the City's purchase of Welaunee property needed for the transmission line and substation.

FISCAL IMPACT

\$9,852,000, less adjustments for the value of various easements required for the transmission line and associated facilities and plus any closing costs to be borne by the City, expected to be approximately \$100,000. The Electric Utility will finance the purchase by the Electric Utility through the Sunshine State Governmental Financing Commission for a period not to exceed 20 years. The value of portions of the property used by other departments of the City, or ultimately sold in compliance with the Contract of Purchase and Sale with Powerhouse, Inc., will be reimbursed to the Electric Utility. The reimbursement will be at the 2005 market value of the property if used by a City Department; or, if sold to an entity other than a City department, at the fair market value established at the time of the sale.

James R. English
City Attorney

For Information, please contact: Linda Hurst, Assistant City Attorney, Ext. 8554

ITEM TITLE:

Approval of Revisions to the Existing Urban Services Development Agreement and New Contract of Purchase and Sale with Powerhouse, Inc. for the Purchase by the City of 428 Acres of Welaunee

SUPPLEMENTAL MATERIAL/ISSUE ANALYSIS

HISTORY/FACTS & ISSUES

On September 8, 2004, after extensive complex negotiations between Commissioner Allan Katz and Powerhouse representatives, the City Commission approved a conceptual agreement with Powerhouse, Inc., that provided an opportunity for the City to locate portions of the Eastern Transmission Line on Welaunee property; to locate a proposed substation on the part of Welaunee known as the Heel; and, in addition, for the City to purchase through a bargain sale approximately 428 acres of the portion of Welaunee known as the Toe. The major terms of the conceptual agreement approved at the September 8 meeting are summarized below:

1. Sale of 428 +/- acres to the City for \$9,852,000 (plus up to \$60,000 in documentary stamps) with a condition that for approximately 12 years from the purchase date, the City will not develop the property in a manner that would compete with development of the remainder of the Toe;
2. Sale of property in other portions of Welaunee to the City for the transmission line, up to 5 acres for a new substation, and various easements;
3. Reservation by Powerhouse or subsequent owners of a 120-foot wide right of way for Welaunee Boulevard from Fleischmann Road to the property in the Toe being purchased by the City;
4. Completion of the Welaunee annexation;
5. A clearance letter from the Florida Department of Community Affairs providing reasonable assurance that development on the City's acreage will not be aggregated with development on the remainder of the Toe for Development of Regional Impact purposes;
6. Amendment of the April 15, 1990, Urban Services Development Agreement to incorporate the terms of the conceptual agreement approved September 8, 2004, and to provide that the contribution of the Welaunee Boulevard right of way may be used to defray off-site transportation concurrency obligations; and
7. Amendment of the Welaunee Critical Area Plan in the Comprehensive Plan to allow for alternative development of the Heel as an estate lot subdivision.

Items # 1, 2, 3, and 5 have been incorporated into a Contract of Purchase and Sale (**Attachment 3**) and revisions to the 1990 Urban Services Development Agreement between the City and Powerhouse, Inc., (**Attachment 2**), both of which are before the City Commission for approval. If the two documents are approved, staff will continue working with Powerhouse to finalize the route for the Eastern Transmission Line and a site for Substation BP17.

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Approval of Revisions to the Existing Urban Services Development Agreement and New Contract of Purchase and Sale with Powerhouse, Inc. for the Purchase by the City of 428 Acres of Welaunee

An ordinance completing the annexation of Welaunee has been introduced, and a public hearing was held on October 26, 2005. The public hearing was closed, and the annexation ordinance (along with a companion contraction ordinance) is on the City Commission's November 22, 2005, agenda for action. The Department of Community Affairs' comments on the clearance letter are due November 15, 2005; and will be made available upon receipt. The amendment to the Welaunee Critical Area Plan (Item #7) has been completed.

City staff and Powerhouse would like to close on the 428 acres +/- before the end of 2005. Before the closing can be held, the City Commission must approve the two documents attached to this agenda item. Neither document requires a public hearing. Along with approval of the documents, the City Manager and City Attorney are requesting that the City Commission authorize them to make any necessary minor modifications to the documents and to execute any documents necessary to finalize and close on the purchase of the Welaunee property, both the 428 acres and the property needed for construction of the Eastern Transmission Line and Substation BP17.

The proposed revisions to the Urban Services Development Agreement include access to Welaunee through the Miccosukee Greenway at Dempsey Mayo Road. The Welaunee Critical Area Plan, in Land Use Goal 13 of the Comprehensive Plan, states that access to the Welaunee Toe at Miccosukee Road at Dempsey Mayo may be approved if the local government with jurisdiction finds that such a connection would have a "desirable impact" on the Miccosukee Canopy Road. An analysis has been done to support the required finding based on the reduced traffic on Miccosukee Road. The analysis will be provided under separate cover to the City Commission.

Staff recommends approval of the proposed revisions to the Welaunee Urban Services Development Agreement and the Contract for Purchase and Sale, attached hereto.

OPTIONS

- 1 Approve the Amended and Restated Urban Services Development Agreement between the City and Powerhouse, Inc.; approve the Contract of Purchase and Sale between the City and Powerhouse, Inc.; and authorize the City Manager and City Attorney to make any necessary minor modifications to the documents and to execute any documents necessary to finalize and close on the City's purchase of the 428 acres parcel in the Welaunee Toe and the City's purchase of Welaunee property needed for the transmission line and substation.
2. . Approve the Contract of Purchase and Sale between the City and Powerhouse, Inc., as amended by the City Commission; approve the Amended and Restated Urban Services Development Agreement between the City and Powerhouse, Inc., as amended by the City Commission; and authorize the City Manager and City Attorney to make any necessary minor modifications to the documents and to execute any documents necessary to finalize and close on the City's purchase of the 428 acres parcel in the Welaunee Toe and the City's purchase of Welaunee property needed for the transmission line and substation.

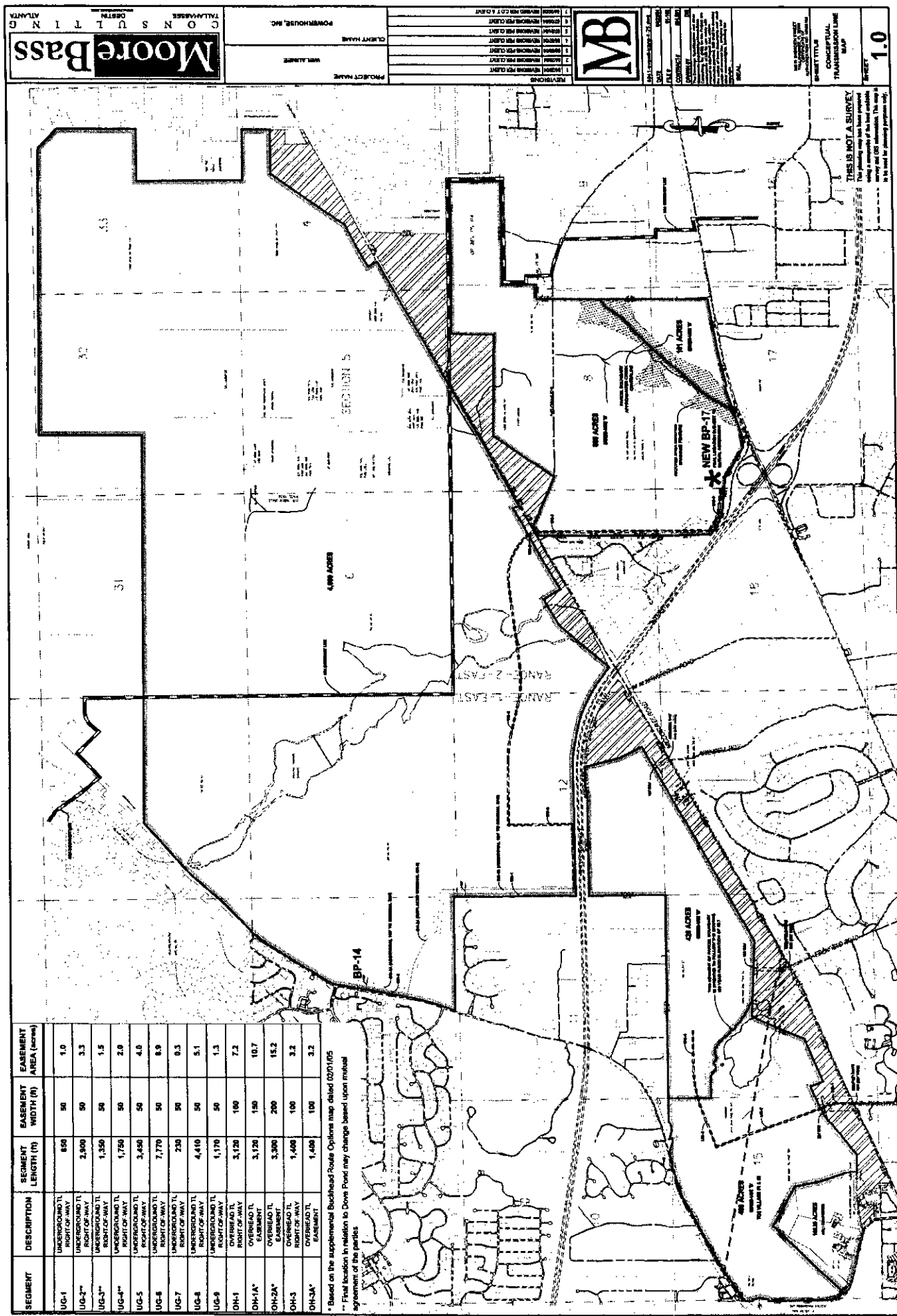
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3. Do not approve the Contract of Purchase and Sale between the City and Powerhouse, Inc. or the Amended and Restated Urban Services Development Agreement between the City and Powerhouse, Inc.; and provide alternative directions to staff.

ATTACHMENTS/REFERENCES

1. Map showing transmission line route and 428 acres +/- proposed for City purchase.
2. Proposed Amended and Restated Urban Services Development Agreement
3. Proposed Contract of Purchase and Sale



SEGMENT	DESCRIPTION	SEGMENT LENGTH (ft)	EASEMENT WIDTH (ft)	EASEMENT AREA (acres)
UG-1	UNDERGROUND TL RIGHT OF WAY	850	50	1.0
UG-2	UNDERGROUND TL RIGHT OF WAY	2,500	50	3.3
UG-3	UNDERGROUND TL RIGHT OF WAY	1,350	50	1.5
UG-4	UNDERGROUND TL RIGHT OF WAY	1,750	50	2.8
UG-5	UNDERGROUND TL RIGHT OF WAY	3,450	50	4.0
UG-6	UNDERGROUND TL RIGHT OF WAY	7,770	50	8.9
UG-7	UNDERGROUND TL RIGHT OF WAY	230	50	0.3
UG-8	UNDERGROUND TL RIGHT OF WAY	4,410	50	5.1
UG-9	UNDERGROUND TL RIGHT OF WAY	1,170	50	1.3
OH-1	OVERHEAD TL EASEMENT	3,120	100	7.2
OH-1A	OVERHEAD TL EASEMENT	3,120	150	10.7
OH-2A	OVERHEAD TL EASEMENT	3,300	200	15.2
OH-3	OVERHEAD TL EASEMENT	1,400	100	3.2
OH-3A	OVERHEAD TL EASEMENT	1,400	100	3.2

* Based on the supplemental Buckhead Route Options map dated 02/01/05
 ** Final location in relation to Dove Pond may change based upon mutual agreement of the parties

Moore Bass
 CONSULTING
 ATLANTA, GA

PROJECT NAME: _____
 CLIENT NAME: _____
 POWERHOUSE, INC.

NB
 NORTH ARROW
 1.0

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AMENDED AND RESTATED URBAN SERVICES-DEVELOPMENT AGREEMENT

THIS AMENDED AND RESTATED Urban Services-Development Agreement is entered into on this ____ day of _____, 2005, by and between the CITY OF TALLAHASSEE, a Florida municipal corporation (hereinafter referred to as "City"); and POWERHOUSE, INC., a Florida corporation; CHRISTOPHER F. DAVENPORT; LOUISE M. DAVENPORT; and ELLEN METTLER (collectively, hereinafter referred to as "Owners").

W I T N E S S E T H:

WHEREAS, Owners proposed the phased development of property ("the Development") shown on Exhibit "A" to this Agreement to be known as "Welaunee" "WELAUNEE PLANTATION"; and

WHEREAS, Owners are desirous of facilitating development on portions of Welaunee through implementation, by themselves or others, of undertaking and ~~implementing~~ a comprehensive development plan approved by local government and consistent with City's Comprehensive Plan and the provisions of Florida Statutes Chapter 163, Part 2, the Growth Management Act; and

WHEREAS, Owners and City are desirous of ensuring that public facilities are available to ensure the best available protection of the ground and surface waters in the Development as well as the drainage basin; and

WHEREAS, Owners are desirous of securing the delivery of municipal services to the Development; and

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WHEREAS, the City has the need for certain road rights-of-way and other public facilities and has the authority to condemn land beyond city limits for said purposes; and

WHEREAS, Owners are willing to make a significant donation of properties for the purpose of providing needed public facilities and major transportation improvements; and

WHEREAS, City of capable of providing such municipal services to the Development and is desirous of acquiring for the use of the public, the property donations for public facilities referenced below; and

WHEREAS, on April 15, 1990, City and Owners entered into this Urban Services-Development Agreement ("Agreement") to address the issues set forth above; and

WHEREAS, certain signatories to the Agreement as "Owners" are deceased (Eleanor Mettler); no longer have a legal existence (the Estate of John W. Mettler, Jr.); or no longer have an estate or interest in the real property encompassed by the terms of the Agreement (John W. Mettler III and Peter W. Mettler); and

WHEREAS, the Owners' obligation under the Agreement, as executed in 1990, to reserve for future dedication the right-of-way for the proposed Northeast Capital Parkway expired on January 1, 2001, and is no longer of any legal effect; and

WHEREAS, the Tallahassee-Leon County Metropolitan Planning Organization ("MPO") eliminated the Northeast Capital Parkway from its long-range transportation plans and instead proposed establishment of a thoroughfare to be named Welaunee Boulevard, to traverse portions of Welaunee and to include an interchange with Interstate Highway 10 ("I-10"); and

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WHEREAS, on September 26, 1996, City; Powerhouse; Leon County; and Holy Comforter Episcopal Church and Day School entered into that certain Planning Agreement ("Planning Agreement") by which Powerhouse exercised the "advance development option" for the Welaunee Critical Planning Area pursuant to Land Use Goal 6 of the Tallahassee-Leon County Comprehensive Plan and its supporting objectives and policies, and the parties to said Planning Agreement further agreed to the initiation of certain limited development on a portion of Welaunee; and

WHEREAS, on March 24, 1997, City; Powerhouse; Leon County; and Holy Comforter Episcopal Church and Day School entered into that certain First Amendment to Planning Agreement ("First Amendment to Planning Agreement") by which certain modifications were made to terms and conditions of the Planning Agreement; and

WHEREAS, Owners have conveyed to City two electric substation sites, not exceeding 10 acres in all, and a water well and water storage tank site, both as required by the Agreement as executed in 1990; and

WHEREAS, Owners initiated in 2000 and completed in 2002, at their sole expense and direction, in consultation with a broad-based Community Advisory Group, all required studies for a critical area plan for portions of Welaunee consistent with Policy LU 6.2.2 of the Tallahassee-Leon County Comprehensive Plan; and

WHEREAS, the City Commission and the Board of County Commissioners of Leon County, on April 9, 2002, adopted the Welaunee Critical Area Plan as Land Use Goal 13 of the Tallahassee-Leon County Comprehensive Plan, effective December 10,

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2002, to establish allowed uses, densities and intensities of use and development controls for portions of Welaunee; and

WHEREAS, on December xx, 2005 Powerhouse sold and City purchased approximately 428 acres in an area of Welaunee bounded by I-10, Miccosukee Road, Centerville Road and Fleischman Road ("City Property"); and

WHEREAS, Owners and City have agreed on other matters concerning eventual development of portions of Welaunee, including but not limited to alignment and certain design characteristics for portions of Welaunee Boulevard; and

WHEREAS, City and Owners desire to revise and update certain terms of the Agreement to reflect these transactions and changed circumstances.

NOW, THEREFORE, the parties hereby agree as follows:

1. Water Utilities: Within one (1) year after Owners have notified City in writing, City will make potable water available to the boundary of the Development in sufficient capacity to serve the projected needs of the Development. However, in no case shall City be required to provide potable water to Owners prior to October 1, 1992. In providing said written notice, Owners shall provide a water master plan specifying the anticipated demand for the initial requested phase, and to the extent feasible, projected demand and phases for the total Development. Owners shall be responsible for the initial expense of installation of water lines within the Development, which expense shall be eligible for reimbursement to Owners as provided for in Paragraph 9 below. Owners may connect into the City water mains at the property boundary for no additional

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charge. The location of water wells and elevated storage tanks sites shall be mutually agreed upon by Owners and City and donated sites shall not exceed a total of 10 acres.

2. Sanitary Sewer: Within one (1) year after Owners have notified City in writing, City shall, at its expense, provide off-site sanitary sewer lines to the boundary of the Development with sufficient capacity to service the Development. However, in no case shall City be required to provide sanitary sewer to Owners prior to April 1, 1993. In providing said written notice, Owners shall provide a wastewater master plan specifying the anticipated demand for the initial requested phase, and to the extent feasible, projected demand and phases for the total development.

Owners shall, at their initial expense, which expense shall be eligible for reimbursement as provided for in Paragraph 9 below, install all on-site sewer lines within the portion of the Development as shown on Exhibit "A", except on the City Property.

All "pump station" or "lift station" sites will be donated by Owners, except on the City Property. Owners shall construct a "pump station" or "lift station" on such sites and refund or rebate of the costs to Owners by City shall be in accordance with Paragraph 9 below. No connection fee will be charged to Owners for extension of the sanitary sewer system.

Any time prior to April 1, 1993, or if at any time during development a sewer tap moratorium shall halt any further use of the sewer facilities, City agrees that Owners may, to the extent allowed by State law and the Comprehensive Plan, use septic tanks in place of the sewer system, except on the City Property.

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3. Underground Electric: City shall provide electric service throughout the entire Development. All electric distribution service provided by City shall be underground and at the expense of City. Installation of electrical service shall be coordinated with Owners so as to minimize any disruption to Owners' schedule for completion of services to the Development. ~~Owners agree to donate no more than ten (10) acres as site(s) for electric substation(s), the location of said sites(s) to be mutually agreed upon by Owners and City.~~

4. On-Site Roadway Improvements: The on-site roadway improvements within the Development shall be made by Owners at their cost, except on the City Property, and in compliance with City standard specifications. All streets and sidewalks within the Development designated by Owners as public shall be dedicated to and accepted by City as public streets and sidewalks. All required new sidewalks on public streets shall be paid for by City. ~~Owners shall reserve for future dedication right-of-way for the Northeast Capital Parkway (Parkway) from and along a corridor from Dempsey Mayo Road north of Dove Lake then northeasterly to a proposed intersection of I-10 and then northerly to the northwest corner of the Development (Exhibit "A") to Centerville Road as shown on Exhibit "B". Right-of-way width shall be based upon the typical cross-section #3 Capital Parkway as shown on Exhibit "C". Owners' obligation to dedicate said Parkway right-of-way shall cease on January 1, 1998, if, by said date, continuous on-site construction of the Parkway has not begun. City shall be entitled to a three (3) year extension until January 1, 2001, provided it requests said extension in~~

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writing to Owners on or before January 1, 1997. Further, City agrees that Owners shall be provided the following Parkway access and right to approve the location of

- a) a single Interchange south of I-10 located between Miccosukee Road and I-10 as depicted in Exhibit B; said Interchange shall be designed to provide direct access to Owners' property from a connector road;
- b) a minimum of two (2) bridges with dimensions of no less than 40' width and 14' in height located south of I-10; and
- c) three (3) at grade intersections north of I-10.

City and Owners agree that Owners shall be entitled to access to Miccosukee Road south of I-10 at two points; one at Arendahl Way and one at Arendell Way. Edenfield Road and Dempsey Mayo Road. Roads at these locations shall be located within existing road access easements across the Miccosukee Canopy Road Greenway and shall have no more than two through travel lanes. Owners will provide shall reserve for future dedication the right-of-way for the easterly extension of Shamrock South from Centerville Road to the east of the intersection of Interstate 10 with U.S. 90 (Mahan Drive Road). The final siting of the right-of-way alignment shall be agreeable to both City and Owners. Right-of-way width shall be based upon estimated traffic generation from the development; however, in no event shall the right-of-way be less than 100 feet nor shall it exceed 150 feet. The cost of construction shall be borne by whichever party (i.e. City or Owners) requires it be constructed first; provided, however, that either Owners or City may elect to construct a phase of the Shamrock South extension on a mutually agreed alignment without incurring the obligation to pay for construction of the

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extension on its entire length from Centerville Road to U.S. 90. The surface water/stormwater management surface water retention/treatment facilities constructed by Owners as a part of the roadway improvements shall be dedicated to the local government having jurisdiction, which local government shall be responsible for the ownership, maintenance, and management of these facilities or to one or more community development districts, at the Owners' option, except on the City Property.

5. Trees: Trees will be planted in accordance with City policy as amended from time to time within the road rights-of-way. Planting the trees will be the obligation of the ultimate home builder. The trees must be planted before a certificate of occupancy is issued.

6. Stormwater and Recreational Facilities: Stormwater management systems used for recreational purposes shall be owned and managed by a one or more homeowners associations, community development districts or a combination thereof, except on the City Property. The City/County will be granted easements and the perpetual right to discharge stormwater from the publicly owned streets and facilities within the Development to the stormwater management system used for recreational purposes. However, stormwater shall be treated in conformance with state water quality standards (e.g. Chapters 17-3 and 17-25, F.A.C.) prior to discharge to this stormwater management system. All stormwater management systems not used for recreational purposes shall be dedicated to the City/County or one or more community development districts, at the Owners' option, except on the City Property. Lands utilized

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for stormwater management systems shall be credited toward the open space, preservation and conservation requirements in the local comprehensive plan.

7. Annexation: Owners have executed and filed with the City irrevocable Petitions for Voluntary Annexation of the Development shown in Exhibit "A" of this Agreement. The City hereby acknowledges that the portion of the Development depicted as Phase I on Exhibit "D" has been successfully annexed, and that therefore the City and Owners are each entitled to their respective benefits, and each are bound to perform their respective obligations, under this Agreement. ~~The obligations of City and Owners as set forth herein shall be contingent upon successful annexation of at least that portion of the Development depicted as Phase I on Exhibit "D".~~

8. Easements: Owners shall provide to City at no expense to City and upon request by City, all easements within the Development, except on the City Property, as are necessary for sewer, water, electricity and City's care and maintenance of public facilities as provided for in paragraph 11 below. The location of such easements shall be mutually agreed upon by City and Owners and shall not interfere with the buildable area of residential lots.

9. Rebates and Acceptance of Dedicated Improvements: City shall, within 90 days of acceptance of facilities by the City, establish a refunding account to reimburse Owners in accordance with the provisions of Sections 21-86 through 21-91 and Section 21-93, Tallahassee General Code of Ordinances (formerly Sections 25-139 and 25-141 of the Code of the City of Tallahassee) for the installation of on-site water lines, on-site sewer lines and any other sewer lines or facilities required by City and paid

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for by Owners. These reimbursement provisions shall continue in effect if Sections 21-86 through 21-91 and Section 21-93 (formerly Sections 25-139 and 25-141) cited above are repealed and shall expire only in accordance with the provisions in Paragraph 4 of this Agreement.

10. Welaunee Boulevard. The following provisions shall apply with respect to Welaunee Boulevard as addressed in the adopted Welaunee Critical Area Plan and in the 2020 Long-Range Transportation Plan update:

- a) Owners and City shall reserve for future dedication, on portions of the property which they respectively own, right-of-way for a thoroughfare which shall be named Welaunee Boulevard, in a corridor from the intersection of Fleischmann Road and Welaunee Boulevard in the Southern Corridor alignment, to north of Dove Pond, and then to an interchange with I-10, as depicted on Exhibit "B", which is attached hereto and incorporated herein. The reserved right-of-way shall be 120 feet wide with a 94-foot-wide right-of-way for segments in planned town or neighborhood centers, with a speed limit of 35 mph consistent with a walkable mixed-use town center. The final right-of-way alignment for Welaunee Boulevard south of I-10 shall be mutually agreed by City and Owners. Right-of-way shall be dedicated in conjunction with development.
- b) Welaunee Boulevard shall be designed and constructed as a "town-and-country" road consistent with Policy LU 13.1.4 of the Tallahassee-Leon County Comprehensive Plan. Right-of-way widths may vary and shall be

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based upon the typical cross-sections in Composite Exhibit "C", attached hereto and incorporated herein. Right-of-way width may exceed 200 feet in low-density areas only with approval of Owners and if necessary to provide an "eyebrow" road or to accommodate a split-section profile to minimize environmental impacts.

- c) City and Owners agree to dedicate, from their respective landholdings, the land necessary for an I-10 interchange with Welaunee Boulevard as approved by the Federal Highway Administration and Florida Department of Transportation, not to exceed 9 acres on each side of I-10. City agrees to apply for and diligently seek approval from all agencies with jurisdiction for an interchange designed and constructed consistent with Policy LU 13.1.4 of the Tallahassee-Leon County Comprehensive Plan.
- d) Owners' obligation to reserve right-of-way for the I-10 interchange shall expire 10 years from the effective date of this Agreement as amended and restated, if actual and continuous construction of the interchange has not begun by that date.

Assignability: ~~This Agreement shall be binding upon Owners and City, their successors or assigns. As to Owners, this Agreement, including all benefits and obligations contained herein, may be assigned in whole or part, provided that such assignment is made in writing, approved as to form by the City and filed with the City Treasurer Clerk.~~

11. Public Facility Sites: ~~Owners, at no cost to City, shall deed to the City fee simple title to a site approximately eighty (80) acres in size, thirty (30) of which shall~~

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~~constitute a buffer zone, the design of which shall be mutually agreed upon by City and Owners. This site shall be used only for a wastewater treatment facility and elevated water storage tank and for no other purpose including but not limited to, the on-site disposal of effluent except by DER approved deep well injection or rapid infiltration basin technologies. There shall be no on-site application of sludge and no on-site spray irrigation of effluent. If rapid infiltration is utilized, it shall be for no more than one (1) million gallons per day and shall cease operation when this site is connected by sewerage transmission lines to another disposal site. Should this site be used for any purpose other than described above, it shall revert to Owners. Owners consent to examine the feasibility of effluent reuse for irrigation purposes of any golf course development with the Development. The 80-acre site shall be located west of the proposed Parkway and contiguous to the southern boundary of I-10, the configuration of which shall be mutually agreed upon by City and Owners. Owners further agree to provide one two (2) acre site for fire protection provided City is unable to co-locate such service on lands provided for water utilities pursuant to Section 1 of this Agreement. City agrees that on-site construction of the wastewater treatment plant will commence not sooner than January 1, 1997. Owners shall, contemporaneous with issuance of a final local development order which establishes and allocates build-out stormwater capacity for that area of Welaunee bounded by I-10, Miccosukee Road, Centerville Road and Fleischmann Road, make available the necessary land or rights of use, at no cost to the public, for Doye Pond to be incorporated into a regional stormwater management system for storage of treated stormwater to an elevation of approximately~~

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100 feet NGVD, provided, however, that Owners shall not be required to pay any share of costs for capital improvements needed to store, manage, control, convey or treat, in Dove Pond or elsewhere, stormwater runoff from off-site sources during flood events. Owners' obligation to grant this land or rights of use shall be contingent upon: (a) approval by the local government with jurisdiction of a regional stormwater management plan for the Tri-Basin Study Area as provided by Policy LU 13.1.5(3), Comprehensive Plan; (b) approval of public funding in an adopted local government budget for stormwater management facilities to implement the regional plan; and (c) approval of interbasin transfers necessary to implement the regional plan. Final local development orders for development in this portion of Welaunee which drains away from Dove Pond or where stormwater requirements are met on-site (and without utilization of Dove Pond) shall not obligate Owners to grant the land or rights of use addressed in this paragraph.

12. Letter of Agreement: In addition to this Agreement, the parties will enter into a Letter of Agreement in a standard form used by the City for installation of improvements and payment of rebates for those improvements. The Letter of Agreement is supplemental and subordinate to this Urban Services-Development Agreement; if any conflict exists between the Letter of Agreement and this Agreement, then this Agreement shall control.

13. Owners' Contribution: City shall credit toward any system charge (for the water storage tank site), impact fee (for the parkway corridor and for donation to the City of right-of-way not needed for the Owners' development) or exaction imposed by local

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ordinance upon any land within the Development, any Owner 1) contribution of land for a public facility; or 2) construction, expansion, or payment for land acquisition; or 3) construction or expansion of a public facility, or a portion thereof. The intent of this paragraph is that Owners shall be entitled to the credits and contributions described herein to the extent not prohibited by the current City Code. City agrees that future changes to the City Code notwithstanding, this paragraph shall continue to be interpreted according to the City Code as it exists on the date of execution of this Agreement, and shall remain in effect for the duration of this Agreement according to the terms of paragraph 14. In providing Owners credit for contributions described above, the value of all Owners contributions made pursuant to this Agreement shall be established by MAI appraisal at the time of donation. The selection of the appraiser shall be mutually agreed upon by City and Owners. The value of the contributions shall constitute a "bank" upon which Owners, at their discretion, may draw in lieu of and in payment of system charges (for the water storage tank site), impact fees (for the parkway corridor and for donation to the City of right-of-way not needed for the Owners' development) or exactions imposed by local ordinance. City agrees that credits for the right-of-way contribution for Welaunee Boulevard addressed in Paragraph 10 may be used by Owners to defray off-site transportation concurrency obligations. ~~In recognition of Owners reservation of Parkway right-of-way pursuant to paragraph 4 of this Agreement, City agrees that ten per cent (10%) of the present value of said right-of-way shall immediately be credited to and irrevocably vest with the "bank" described above to be applied by Owners as described above. If the additional three year option pertaining~~

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~~to reservation of Parkway right-of-way is exercised by City as described in paragraph 4 above, Owners shall be entitled to an additional 5% credit to be applied to the "bank."~~
~~Said additional 5% credit shall be established by mutually agreed upon MAI appraisal and immediately and irrevocably vest on January 1, 1998.~~

14. Terms: This Agreement shall become effective upon execution and shall run for a period of 30 years, said time period to commence upon Owners' receipt of all City approvals necessary to commence development. The provisions of this paragraph shall be tolled for and during the duration of any development moratorium or similar prohibition on the commencement or completion of development.

15. Land Use Allocations and Limitations: Owners and City agree that in the area of Welaunee bounded by I-10, Miccosukee Road, Centerville Road and Fleischmann Road, the parties' respective land use allocations under the adopted Welaunee Critical Area Plan shall be as follows: for Powerhouse, 1,283 residential units, 102,800 GSF of retail and 60,120 GSF of office and on the City Property, 1,429 residential units, 136,940 GSF of retail and 135,810 GSF of office. Until build-out of Owners' acreage in this area but not more than eight years from commencement of actual physical development or more than 12 years from December xx, 2005, whichever shall occur first, the City Property may be used only for public, charitable and civic uses, including conservation, passive or active recreation, community services, affordable housing and ancillary on-site uses and other uses which do not compete with uses on the Owners' acreage in this area. During this period, any other allowable uses expressly identified for this area shall be subject to prior review and approval by Owner.

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Thereafter, the City Property may be used for any purpose allowed by the Welaunee Critical Area Plan, as it may be amended. Miscellaneous: The term "continuous," as used in this Agreement shall mean no lapse in construction activity for a period of six (6) months or more; any lapse in construction activity of more than six (6) months shall not be considered continuous.

16. Shared Costs. City and Owners agree they will share costs for a required Natural Features Inventory (NFI) and Stormwater Facilities Master Plan (SFMP) in the area bounded by I-10, Miccosukee Road, Centerville Road and Fleischman Road, on a pro rata basis based on each parties' respective acreage in this area. City and Owners each agree to pay its share for preparation and adoption of the NFI and SFMP upon request by the other party and acknowledgement that the NFI and SFMP may be required to prepare a regional stormwater management plan pursuant to Policy LU 13.1.5(3) of the adopted Welaunee Critical Area Plan. The NFI and SFMP studies shall be based on the adopted Welaunee Critical Area Plan and the land use allocations in Paragraph 15. City and Owners agree an application for development of this area alone shall not trigger the NFI/SFMP requirements for the area bounded by I-10, U.S. 90 and Miccosukee Road, and vice versa.

17. Acknowledgement: City hereby acknowledges that Owners are entitled to receive the following credits based on performance of certain obligations under this Agreement between its effective date and the effective date of this Agreement as amended and restated:

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a) \$51,300 in credits against transportation-related impact fees, exactions or system charges for reservation for the Northeast Capital Parkway right-of-way through December 31, 1997; and

b) In lieu of engaging an MAI appraiser to appraise the value of the Northeast Capital Parkway right-of-way as of January 1, 1998, for purposes of the three-year extension through December 31, 2000, half the sum of \$51,300 (i.e., \$21,650 in credits against transportation-related impact fees, exactions or system charges for extension of the reservation for the Northeast Capital Parkway right-of-way from January 1, 1998, through December 31, 2000; and

c) \$44,000 in credits against water system fees, exactions or charges for dedication of a water well and water tank site on Fleischmann Road.

18. Planning Agreement: City and Owners agree that the terms and conditions of this Agreement shall not vary or affect the terms and conditions of either the Planning Agreement or the First Amendment to Planning Agreement.

19. No Unified Plan of Development: City and Owners agree this Agreement is an activity leading to adoption or amendment of the Tallahassee-Leon County Comprehensive Plan and is not intended to be, and shall not constitute evidence of, a unified plan of development for purposes of section 380.0651(4), Fla Stat.

20. Miscellaneous: The following provisions shall also apply to this Agreement:

a) This Agreement shall be binding upon Owners and City, their successors or assigns. As to Owners, this Agreement, including all benefits and obligations

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contained herein, may be assigned in whole or in part, provided that such assignment is made in writing, approved as to form by the City and filed with the City Treasurer-Clerk.

b) The recitals set forth above are incorporated herein as a material part of this Agreement and shall be construed as such.

c) This Agreement shall be governed by, construed under and enforced in accordance with Florida law.

d) Paragraph headings contained in this Agreement are for convenience and reference only, and in no way define, describe, extend or limit the scope or intent of the terms and conditions of either agreement.

e) This Agreement may be executed in multiple counterparts, each constituting a duplicate original, but all such counterparts constituting one and the same agreement.

f) Without limiting the rights and obligations set forth in this Agreement, City and Owners declare their intention to cooperate with each other in effectuating the terms of this Agreement, and to coordinate performance of their respective obligations.

g) Any required notices or reports shall be sent to the following:

For City: City Attorney
City Hall, Second Floor
300 South Adams Street
Tallahassee, FL 32301

For Owners: Christopher F. Davenport
c/o Powerhouse, Inc.
3000 Welaunee Road
Tallahassee, FL 32309

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EXECUTED by the City and Owners as indicated by their signatures:

CITY OF TALLAHASSEE:

By: _____
John Marks
Mayor

Date: _____

Approved as to form:

James R. English
City Attorney

Attest:

City Treasurer-Clerk

POWERHOUSE, INC.:

By: _____
Christopher F. Davenport
Its President

Date: _____

Witness

Printed Name of Witness

Witness

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Printed Name of Witness

OTHER OWNERS:

By:

Louise M. Davenport

By:

Christopher F. Davenport

By:

Ellen Mettler

This document prepared by:

David L. Powell
Hopping Green & Sams
Post Office Box 6526
Tallahassee, FL 32314
Tel: (850) 425-2222
Fax: (850) 224-8551

207072.1

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Exhibits

Exhibit "A" -- Sketch Map of Welaunee (new)

Exhibit "B" -- Diagram of Welaunee Blvd. Alignment (new)

Composite Exhibit "C" -- Typical Cross-Sections of Welaunee Blvd. (new)

C-1 Typical Neighborhood and Town Center Section

C-2 Typical Country Section

C-3 Typical Residential Eyebrow Section

C-4 Typical Split Section

C-5 Alternative Town Center Section

Exhibit "D" -- Phased Annexation (original)

CONTRACT OF PURCHASE AND SALE

THIS CONTRACT dated as of the date last executed by the Parties herein ("Contract Date"), by and between **POWERHOUSE, INC.**, a Florida corporation, with an address at 3000 Welaunee Road, Tallahassee, Florida 32309 ("Seller") and **CITY OF TALLAHASSEE**, a Florida municipal corporation, with an address at City Hall, 300 South Adams Street, Tallahassee, Florida 32301 ("Buyer"). Seller and Buyer are collectively referred to as "Parties" and individually as a "Party".

Seller owns certain real property located in the northeast section of the City of Tallahassee and in Leon County, Florida, which property is known as Welaunee Plantation and which includes approximately 6,500 acres. Welaunee Plantation in its entirety is roughly in the shape of a boot. The western portion is the "Toe" (approximately 937 acres), the central northern portion is the "Arch" (approximately 4,660 acres), and the eastern portion is the "Heel" (approximately 903 acres). These terms are used throughout this Contract to generally refer to these three distinct portions of Welaunee Plantation as depicted on Exhibit "A" attached hereto and made a part hereof.

The Buyer desires to acquire approximately 428 acres of the eastern portion of the Toe and depicted as City Parcel on Exhibit "A" attached hereto and made a part hereof ("City Property"). The westerly boundary of the City Property shall be the eastern and northern perimeters of Dove Pond measured at its 100-year floodplain and the section line for Section 15, Township 1 North, Range 1 East. The final legal description of the City Property to be conveyed shall be mutually agreed upon by the Parties and based upon the survey to be provided. As of the date of this Contract, a survey has not been done, but will be done as soon as possible. The survey will provide legal descriptions as needed to implement the terms of this Contract, and the cost of the survey will be shared equally by the Parties. The Parties agree to cooperate fully in obtaining the survey as soon as possible ("Survey").

The Buyer desires to acquire the City Property and certain easements, the general locations of which are also depicted in Exhibit "A" ("City Easements") for public use, as provided herein for construction, operation, and maintenance of electric transmission lines, associated distribution facilities, and communications lines. The City Easements will be for the exclusive use of the City for utility purposes, except as required by Seller or Seller's assigns for open space, passive recreation (such as hiking and biking trails), landscaping, transportation, drainage, or other public facilities to serve contemplated future urban development on lands retained by Seller, which uses shall not conflict with the Buyer's use and shall be subject to

1 Buyer's approval, which shall not be unreasonably withheld. The final legal description of the
2 City Easements shall be based upon a mutually agreed upon alignment and the Survey.

3 The Seller and Buyer have agreed to grant, sell, exchange or purchase the City Property,
4 other properties, and the City Easements upon the terms and conditions set forth below.

5 1. Sale and Purchase of Property and Conveyance of City Easements.

6 A. Property: Seller agrees to sell and convey to Buyer, and Buyer agrees to purchase
7 from Seller, all right, title and interest of Seller in and to the City Property including (i) all easements,
8 rights of way, licenses, appurtenances, improvements and other rights and benefits belonging to the
9 Seller running with, or in any way relating to the City Property; and (ii) all consents, authorizations,
10 variances, waivers, licenses, permits and approvals previously obtained from any governmental
11 authority with respect to the City Property.

12 B. Other Properties:

13 (1)(a) Seller will grant to the Buyer a 100-foot wide easement for underground
14 transmission and distribution lines in the Heel to the new substation BP 17 property as generally
15 depicted UG-9 on Exhibit "A" and as provided in Paragraph D. below, consisting of
16 approximately 1.0 acre; plus easements for a distribution line back to Mahan Drive

17 (b) Seller will grant to the Buyer an easement of varying width, at or near the
18 westerly end of the Arch, for an overhead transmission line to substation BP14, generally
19 depicted as Segments OH-1, OH-1A, OH-2A, OH-3, and OH-3A on Exhibit "A" and as provided
20 in 19.B. below. The easements shall consist of connected segments generally described as
21 follows:

22 (i) Adjoining the easterly boundary of the Buckhead development,
23 Segments OH-1 and OH-1A having a combined width of 250 feet and a
24 combined length of approximately 3,120 feet as depicted on Exhibit "A";

25 (ii) North of the Buckhead development, Segment OH-2A having a
26 width of 200 feet and running approximately 3,300 feet along the northern edge
27 of a wetland system as depicted on Exhibit "A".

28 (iii) Adjoining the east side of Centerville Road and south of BP14,
29 Segments OH-3 and OH-3A having a combined width of 200 feet and a length of
30 approximately 1,400 feet as depicted on Exhibit "A".

31 (2) In addition to C.(1) herein, if the Buyer receives a denial of its request from the
32 Department of Transportation to use the I-10 corridor for transmission lines as depicted
33 on Exhibit "A", Buyer will notify Seller of Buyer's intention to locate underground
34 transmission lines on the City Easements as generally depicted as UG-5, UG-6, UG-7,

1 and UG-8 on Exhibit "A". Seller agrees to convey to Buyer a 50-foot wide easement for
2 the use of the Buyer for electric transmission lines and associated infrastructure on an
3 alignment to be agreed upon (which, unless otherwise agreed to by the Parties shall be the
4 same alignment as the future Shamrock South connector as addressed in Paragraph 4 of
5 the Urban Services-Development Agreement between the Buyer and Seller dated April
6 15, 1990 (hereinafter "Urban Services-Development Agreement") and as shown on the
7 Survey. The parties recognize that processing of this request with the Department of
8 Transportation may not be completed prior to the closing date described in Section 3.
9 The obligations of the Seller and Buyer set forth in this paragraph shall survive the
10 closing, delivery and recording of the other deeds and other easements described in this
11 Contract.

12 C. The Seller will convey a site to the Buyer, not to exceed five (5) acres, for a new
13 substation BP 17 at a mutually agreed upon location near the I-10 interchange with U.S. 90
14 ("New Substation BP 17 Property"), together with a 50' easement for transmission and
15 distribution lines, as will be shown on the Survey. The Parties shall cooperate in meeting the
16 requirements, including a Natural Features Inventory, temporary construction easement(s), if
17 needed, and slope easement, for locating and constructing the New Substation BP 17 Property.
18 The Buyer will provide aesthetic buffering at its expense and consistent with Landscape
19 Standard "D" of Section 10-177, City of Tallahassee Land Development Code. The substation
20 is to be designed as a low-profile structure compatible with its surroundings as mutually agreed
21 upon by Buyer and Seller, with both transmission and distribution lines accessing the facility
22 underground. The Buyer will re-convey, by special warranty deed, the existing BP 17
23 substation site, depicted as 1.C. on Exhibit "A", to the Seller. These actions are intended to
24 constitute a like-kind exchange pursuant to Section 1031 of the Internal Revenue Code of 1986,
25 as amended.

26 D. The Parties will exchange reciprocal drainage easements, with the legal
27 descriptions to be mutually agreed upon by the Parties and to be shown on the Survey,
28 sufficient to accommodate development pursuant to Federal, State, and local regulations of the
29 City Property and the Seller's remaining portion of the Toe. Seller's reserved drainage
30 easement shall accommodate the post-development 100-year floodplain of Dove Pond to
31 facilitate stormwater management, and Seller shall grant Buyer a reciprocal drainage easement
32 over Seller's retained interest in the Dove Pond floodplain to accommodate development of the
33 City Property based on the uses and densities and intensities of use set forth in Section 19.D

1 E. The Seller will grant to Buyer an easement for construction, operation,
2 and maintenance of an underground transmission line and associated infrastructure within Seller's
3 road access easement across the Miccosukee Canopy Road Greenway ("Greenway") at Dempsey
4 Mayo Road, and its planned extension onto Seller's property, and from there easterly along the
5 Seller's property's boundary line with the Greenway, with a legal description to be mutually
6 agreed upon by the Parties and to be shown on the Survey. Buyer agrees to bury the transmission
7 line across the Greenway from Dempsey Mayo Road, within the planned right-of-way of the
8 Dempsey Mayo Road extension, and within the Seller's property adjacent to the Greenway
9 boundary, the route and location of which will be determined by the Seller after consultation
10 with the Buyer, and in a location to be determined by Seller. The conversion of the transmission
11 line from the underground line to an overhead line on City's Property shall be located, by mutual
12 agreement of the Parties, to minimize visibility from the Seller's property.

13 F. Any easement granted, purchased, or reserved by either Party pursuant to this
14 Contract, may upon mutual agreement of the Parties, be used for bicycle and pedestrian
15 easements in addition to the primary use of the easement.

16 2. Purchase Price and Deposit.

17 A. Purchase Price

18 (1) Buyer shall pay Seller \$20,000.00 per acre in cash for the easement described
19 in 1.B.(1)(b); and

20 (2) Buyer shall pay Seller fair market value in cash for the property described in
21 1.B.(1)(a), 1.B.(2), 1.D., and 1.E. The parties shall establish these amounts, with
22 reference to pertinent appraisals, in good faith prior to closing; and

23 (3) Buyer shall pay Seller Nine million eight hundred fifty-two thousand and
24 no/100 Dollars (\$9,852,000.00) in cash for the City Property, less (i) any amounts paid
25 pursuant to 2.A.(2) and (ii) any amounts paid pursuant to 2.A.(1) as consideration for OH-
26 1 and OH-3.

27 (4) The Purchase Price shall be paid to Seller at closing by cashier's check,
28 certified check or wire transfer, subject to adjustments, credits and prorations as provided
29 in this Contract.

30 B. Deposit:

31 (1) Within five (5) days after the date on which both Seller and Buyer have
32 executed and delivered this Contract ("Contract Date"), Buyer shall deposit with ___[to be
33 determined]_, as escrow agent ("Escrow Agent"), the sum of One hundred twenty-five

1 thousand and no/100 Dollars (\$125,000.00) ("Initial Deposit"). After the Inspection
2 Period, as described in Section 8, the Buyer will deposit an additional One hundred
3 twenty-five thousand and no/100 dollars (\$125,000.00)("Additional Deposit") with the
4 Escrow Agent, for a total Deposit of Two hundred fifty thousand and no/100 Dollars
5 (\$250,000.00)(cumulatively the "Deposit"). The Deposit will be paid to Seller at closing to
6 be credited against payment of the Purchase Price. Buyer shall pay all charges and costs,
7 if any, relating to the services of the Escrow Agent.

8 (2) Escrow Agent shall invest the Deposit in a certificate of deposit or other
9 interest bearing account. Escrow Agent shall deliver the interest on the Deposit to Buyer
10 upon closing of title or, if the transaction fails to close, to the Party entitled to the Deposit
11 as provided in this Contract.

12 (3) Escrow Agent shall not be liable for any acts taken in good faith but only
13 for its intentional misconduct or gross negligence. It may rely upon the written notices,
14 communications, orders or instructions given by any party or believed by it to be genuine.
15 Escrow Agent shall give notice to the other Party of any demand for payment of the
16 Deposit received from a Party. Should Escrow Agent not receive an objection from the
17 non-demanding Party to the proposed payment within seven (7) days after the date such
18 notice is given, Escrow Agent is authorized to make payment to the demanding Party; if
19 an objection is received within such seven (7) day period or if for any other reason Escrow
20 Agent, in good faith, is uncertain about its responsibilities, it shall continue to hold the
21 Deposit until otherwise directed by written instructions from Seller and Buyer or by final
22 judgment of a court of competent jurisdiction. Escrow Agent may at any time deposit the
23 Deposit with the Clerk of the Court for Leon County and thereby shall be relieved and
24 discharged of all its obligations under this Contract. In the event of any suit wherein
25 Escrow Agent is made a party by virtue of acting as such hereunder, or in the event of any
26 suit wherein Escrow Agent interpleads the Deposit, Escrow Agent, provided that it has
27 acted in good faith and has neither engaged in any intentional misconduct nor been grossly
28 negligent, shall be entitled to recover reasonable attorneys' fees, paralegal charges and
29 other costs incurred, with such fees and costs to be charged and assessed as court costs in
30 favor of the prevailing party. To the extent Escrow Agent holds interest earned on the
31 Deposit, such funds shall be considered encompassed by the term "Deposit" as used in this
32 Contract.

1 3. Closing. The Closing ("Closing") for payment of the purchase price and delivery of a
2 statutory general warranty deed (the "Deed") and other closing documents reasonably required by
3 either party (including an appropriate and customary affidavit of Seller as assurance against the
4 existence of outstanding rights which could form the basis for mechanics liens, unrecorded
5 easements or claims of parties in possession) shall take place within thirty (30) days following
6 satisfaction of all Conditions to Closing described in Section 7. Closing will occur within such thirty
7 (30) days on a date, at a time, and at such location in Tallahassee as may be mutually agreeable with
8 the Parties. At Closing, Seller shall deliver to Buyer possession of the Property. If Seller cannot
9 obtain title insurance effective at Closing without an exception for events prior to recordation of the
10 Deed, Escrow Agent shall hold the purchase price in escrow following Closing for a period not to
11 exceed seven (7) business days to allow Buyer to confirm that there have been no matters intervening
12 prior to Deed recording that would render Seller's title to the Property unmarketable. If such
13 intervening matters arise, Buyer shall provide written notice thereof to Seller, and Seller shall have
14 thirty (30) days from the date it receives such notice to cure the defect. If Seller fails to cure such
15 defect within that time, Buyer may cancel the Contract and re-convey the Property by Special
16 Warranty Deed. In the event of such re-conveyance, Buyer shall promptly cure all defects in title
17 arising or resulting from its ownership of the Property and shall hold harmless and indemnify Seller
18 from and against all costs (including without limitation reasonable attorney's fees and associated
19 costs), expenses, and damages Seller may incur as a result of such defects. Seller, in the event of
20 such re-conveyance, shall refund the Deposit and the balance of the purchase price to Buyer within
21 ten (10) business days following the date of such re-conveyance; provided, however, if Buyer is
22 called upon to cure defects arising or resulting from its ownership, Seller shall refund such amounts
23 within seven (7) business days after such defects are cured to the reasonable satisfaction of Seller.
24 Such indemnification, refund, and re-conveyance shall be the sole remedies of the Parties in regard to
25 such intervening matters.

26 4. Title to Properties.

27 A. At Closing, Seller shall convey and Buyer shall accept good, marketable and
28 insurable fee simple title to the City Property and the New Substation BP 17 Property (collectively
29 the "Properties") subject to the exceptions described in Exhibit "B" attached hereto and incorporated
30 herein by this reference ("Permitted Exceptions") together with those easements described in Section
31 1.B., 1.C., 1.D. and 1.E. above. Within thirty (30) days from the Contract Date, Buyer shall order the
32 following: (i) a commitment for an owner's title insurance policy in the amount of the purchase price
33 insuring Buyer's title to the Properties, subject to such exceptions or conditions as may be set forth
34 therein; and (ii) a current Survey of the Properties, certified to Buyer, Seller, and other parties

1 designated by Buyer, indicating all matters affecting title to the Properties which are locatable.
2 Buyer, within twenty (20) days following receipt of both the title commitment and the survey, shall
3 notify Seller's attorneys of any objection(s) to title, except for the Permitted Exceptions, which make
4 title to the Properties unmarketable or would limit or prohibit the Buyer's intended uses of the
5 Properties. Seller shall, within forty-five (45) days of receiving notice of objections from the Buyer
6 ("Cure Period"), undertake a good faith, diligent effort to cure such objections to title in a manner
7 that will allow the title company to delete such objection(s) from the title commitment. If Seller is
8 unable to cure such defects within such period, Buyer may, within thirty (30) days after expiration of
9 the Cure Period, at its option, either terminate this Contract and receive a return of the Deposit or
10 accept title subject to such uncured defects. If, in such event, Buyer decides to terminate this
11 Contract, such termination and refund of the Deposit shall be Buyer's sole remedy and recourse
12 against Seller, and each Party shall be released of all further obligations under this Contract.

13 B. Title to the Properties shall be conveyed by Seller subject to the Permitted
14 Exceptions listed in Exhibit "B", none of which shall constitute objections to be cured by Seller as
15 set forth above or a permissible basis for termination of this Contract by Buyer.

16 5. Closing Expenses, Apportionments, and Other Fees and Charges:

17 A. Buyer shall pay the costs of title insurance (except that Seller shall pay costs of
18 curing title defects and any related recording costs), Phase I environmental site assessment, and
19 recording the Deed. The Phase I environmental site assessment shall meet the American Society
20 of Testing Materials ("ASTM") standard of practice ASTM Practice E 1527. If the Findings and
21 Conclusions section of the assessment reports evidence of recognized environmental conditions,
22 then a Phase II environmental site assessment shall be performed, at the Seller's expense, to
23 address any suspicions raised in the Phase I report.

24 B. Buyer shall pay the cost of documentary stamps, up to a maximum of \$60,000.00,
25 on the Deed, and all inspections ordered by Buyer.

26 C. Buyer and Seller shall share the cost(s) of Survey equally.

27 D. In accordance with Section 196.295, Florida Statutes, at closing Seller shall place
28 in escrow with the county tax collector an amount equal to the current taxes prorated to the date
29 of transfer. In the event the Buyer acquires fee title to the Properties on or after November 1,
30 Seller shall pay to the county tax collector an amount equal to the taxes that are determined to be
31 legally due and payable by the county tax collector.

1 6. Seller's Representations, Warranties and Covenants. Seller represents, warrants and covenants
2 that:

3 A. This Contract and the contemplated transfer do not and will not contravene any
4 provision of any existing law, rule, regulation, code, ordinance, order, decree, writ or injunction of
5 any governmental authority (collectively "Laws") or recorded restriction; Seller has full power and
6 authority to enter into and perform this Contract and all related instruments contemplated under this
7 Contract in accordance with their respective terms; and the delivery and performance of this Contract
8 and such instruments have been duly authorized by all necessary action.

9 B. Seller is not aware of any existing violation of any Laws; and Seller is not aware of
10 any existing Laws (including, without limitation, "environmental" or "planning" Laws, any
11 applicable comprehensive plan provision or land development regulation, moratorium, or tree
12 removal ordinance) or existing restrictive covenants or regulations affecting the Properties that would
13 prohibit Buyer's contemplated use and operation of the Properties, provided that such use and
14 operation is carried out in accordance with the Permitted Exceptions.

15 C. Seller is not aware of any actual or threatened suits, actions (including, without
16 limitation, regulatory or governmental enforcement actions), proceedings or violations with respect
17 to Seller or the Properties, for condemnation or otherwise; and Seller is not aware of any pending
18 governmental enforcement actions against either the Properties or any on-site activities.

19 D. There are no rights(s) of first refusal, right(s) of first offer to purchase, purchase
20 options(s) or similar rights or contractually required consents to transfer which pertain to the
21 Properties. Seller is, and at Closing shall be, the sole owner in fee simple of the Properties and shall
22 not have assigned, pledged, leased, or transferred its interest; and Seller has, and at Closing shall
23 have, the right to transfer to Buyer marketable title to the Properties, subject to the terms and
24 conditions of this Contract.

25 E. Seller, prior to Closing, will not remove or permit the removal or disturbance of any
26 portion of the Properties including, without limitation, any fill.

27 F. There are no pending assessments or liens for public improvements with respect to
28 the Properties, and all taxes currently due and payable have been paid.

29 G. To Seller's knowledge, no portion of the Properties has previously been used for or
30 in connection with a cemetery; and no underground storage tanks are, or have been, located below
31 the surface of the Properties. Seller shall promptly deliver to Buyer any such notices related to any of
32 the foregoing matters received prior to or after Closing.

1 H. Seller has not caused or permitted any activities (and has no knowledge of any
2 prior activities) on the Properties that would have caused the generation, manufacture,
3 transportation, treatment, storage, handling, disposal or processing of hazardous substances or
4 solid wastes. Copies of all reports related to such contamination and its removal or remediation,
5 including without limitation all books, records and other documents supplied as part of any
6 environmental investigation of portions of the Properties, will be made available to Buyer.

7 I. Seller's representations, warranties and covenants are true and complete as of the
8 Contract Date, shall be true and complete as of the date of the Closing with the same effect as though
9 made on such date, and shall survive Closing.

10 J. Upon execution of this Agreement, Seller shall submit to Buyer a properly
11 completed and executed beneficial interest affidavit and disclosure statement as required by
12 Section 286.23, Florida Statutes, and substantially in the form as attached hereto as Exhibit "D".

13 7. Conditions to Closing.

14 A. Buyer's obligation to consummate this transaction is conditioned upon the
15 occurrence of each of the following matters, unless waived in writing by Buyer prior to Closing:

16 (1) No construction moratorium nor moratorium on water or sewer connections
17 shall be in effect which would apply to any portion of the Properties.

18 (2) There are no contemplated condemnation actions under consideration or
19 pending by applicable governmental or quasi-governmental authorities which would affect
20 all, or a portion of, the Properties.

21 (3) Tallahassee City Commission approval of this acquisition, after final
22 review and approval by the City Attorney and City Real Estate Committee.

23 (4) Buyer's receipt of approval or denial from the Department of
24 Transportation to use the I-10 corridor as shown on Exhibit "A" for a portion of the
25 electrical transmission line route in order to determine whether or not the Buyer will need to
26 purchase the easement from the Seller as provided in Section 1.B.(2) above. If the Buyer
27 waives this condition prior to the Closing on the Properties and City Easements, Section
28 1.B.(2) shall survive said Closing; provided, however, that the Parties shall agree as of
29 Closing on the fair market value that would be attributable to this easement for the purpose
30 of allocating consideration, which shall be payable at closing, if any, for this easement.

31 (5) Buyer's receipt of all necessary approvals and permits for siting
32 construction of electrical transmission lines within the City Property and City Easements.

(6) Buyer's receipt of a clearance letter from the Department of Community Affairs providing reasonable assurances that development of the City Property will not be aggregated with the Seller's planned development in the Seller's retained lands in the Toe for purposes of DRI review pursuant to Chapter 380, Florida Statutes. Seller's retained lands in the Toe are described in the January 2002 Welaunee Critical Area Plan (Toe and Heel) data and analysis book prepared for Seller by Glatting Jackson Kercher Anglin Lopez Rinehart, Inc. and others, on file with the Tallahassee-Leon County Planning Department ("Welaunee Critical Area Plan"). Seller's retained lands in the Toe are generally depicted as 7.A.(6) on Exhibit "A" attached hereto and made a part hereof. Buyer and Seller will agree on all assumptions provided to Department of Community Affairs in the request.

(7) Seller's written agreement to reserve for road improvement a 120-foot wide right of way for Welaunee Boulevard from Fleishmann Road to the City Property with a 94-foot wide right-of-way for segments in planned town or neighborhood centers, with a speed limit of 35 mph consistent with a walkable mixed-use center, based on a location mutually agreed upon by the Parties and consistent with the Welaunee Critical Area Plan. This right-of-way shall be dedicated to the City of Tallahassee in conjunction with Seller's development of the Toe property. The Buyer shall receive any and all rights reserved by the Seller to the perpetual, nonexclusive easements through the Greenway from Miccosukee Road at Edenfield and Arendell Roads.

B. Seller's obligation to consummate this transaction is conditioned upon the occurrence of each of the following matters, unless waived in writing by Seller prior to Closing:

(1) Annexation by City of Tallahassee of that portion of Welaunee Plantation not currently within the incorporated area as shown in Exhibit "C".

(2) Amendment of the Urban Services-Development Agreement to establish road access to Seller's retained lands in the Toe across the Greenway at Dempsey Mayo Road, based on appropriate traffic studies to be done by the Seller as required by the local comprehensive plan.

(3) Amendment of paragraph 13 of the Urban Services-Development Agreement to provide that, based on the methodology set forth in said Paragraph 13, the donation of right-of-way for the Welaunee Boulevard extension and construction of any such extension by Seller or Seller's assigns, pursuant to paragraph 7.A.(7) of this Contract, may be used by Seller or Seller's assigns to defray offsite transportation concurrency obligations.

(4) In light of the division of ownership of the Toe property and the uncertain schedule for full development of the +/- 428 acre City Property, the Urban Services-Development Agreement shall be amended to provide that Buyer and Seller, or their successors and assigns, shall share costs for any Stormwater Facilities Master Plan ("SFMP") required for the Toe by Policy LU 13.1.5(3) of the Tallahassee-Leon County Comprehensive Plan, and any Natural Features Inventory ("NFI") required for the Toe by Policy LU 13.1.2(1) shall be prepared by the party first seeking development approval on the Toe in a manner which invokes the requirement(s), however, Seller and Buyer or their successors and assigns shall share costs for any required SFMP and/or NFI pro rata, based on the Parties' respective acreage in the Toe, based on the densities and intensities of use set forth in Paragraph 19.D below. Seller and Buyer further agree the Urban Services-Development Agreement shall be amended to reflect their joint understanding that an application for development of the Toe alone will not trigger the SFMP/NFI requirement for the Heel, and that an application for the Heel alone will not trigger the SFMP/NFI requirement for the Toe.

C. If any condition described in Section 7.A. or 7.B. above has not been fulfilled in a timely manner and such condition has not been waived, in writing and prior to Closing, by the Buyer, in the case of Section 7.A., or Seller, in the case of Section 7.B., then such Party may cancel this Contract and, in such event, each Party shall be released of all further obligation under this Contract. Upon such cancellation, Escrow Agent shall return the Deposit to Buyer. Such cancellation, release from further obligation, and return of the Deposit shall constitute the sole and exclusive remedy and recourse available to the respective Party in such event.

D. In addition to the conditions for closing herein, both Buyer and Seller shall mutually approve the methods by which all legal descriptions and the fair-market-value-based purchase prices are to be determined and incorporated into this Contract. Such approvals shall not be unreasonably withheld.

8. Buyer's Inspection Period. For sixty (60) days after the Contract Date ("Inspection Period"), Buyer may have the Properties inspected by its engineers and other investigators for the purpose of conducting such geo-technical and environmental studies, tests, borings and investigations as the Buyer may elect ("Inspections"). For the purpose of conducting physical inspections upon the Properties, Seller agrees to provide Buyer and its agents access to the Properties, at reasonable times on Seller's normal business days prior to and during the Inspection period, and Buyer shall conduct such Inspections in a manner not disruptive to the operation of

1 the Seller's adjacent property. If Buyer determines, in Buyer's sole discretion, that the results of
2 any Inspection(s) are unsatisfactory, Buyer may cancel this Contract by notice to Seller given no
3 later than five (5) days following the expiration of the Inspection Period. In such event, Buyer
4 shall receive a return of the Deposit, shall pay Seller One hundred Dollars (\$100.00) in full
5 consideration of the rights granted to Buyer under this Contract, and shall remedy or repair all
6 damages to the Properties resulting from or arising out of the Inspections, whereupon each Party
7 shall be relieved of all further obligations; and neither Seller nor Buyer shall be subject to any
8 claim by the other for damages of any kind, the return of such deposit, payment of such fee, and
9 remediation or repair of such damages being the sole recourse of the Parties, respectively, in the
10 event of such cancellation. Following expiration of the Inspection Period and Buyer's failure to
11 cancel, Buyer and its authorized representatives shall continue to have access to the Properties for
12 Inspections. Buyer shall provide reasonable notice to Seller prior to undertaking any Inspections
13 and shall coordinate such activities with Seller and any owners or lessees of adjoining property.
14 Buyer will provide to Seller copies of all reports it receives in conjunction with any Inspections
15 undertaken. If Seller does not receive notice of termination prior to the end of the Inspection
16 Period, Buyer's right to terminate shall be deemed waived, and Buyer shall be deemed to have
17 accepted the condition of the Properties "as is" as of the expiration of the Inspection Period,
18 subject to ordinary wear and tear, and Seller makes no warranties, express, implied or otherwise,
19 with respect to the Properties, or any portion thereof.

20 9. Risk of Loss. Seller shall immediately notify Buyer in writing of (i) commencement or
21 occurrence of any condemnation or eminent domain proceeding with regard to all or any part of the
22 Properties, and (ii) any damages to all or any part of the Properties by fire or other hazard or casualty
23 (a "Casualty Loss"). If, prior to Closing, condemnation or eminent domain proceedings are
24 contemplated or commenced by any governmental or quasi-governmental agency in connection with
25 all or any portion of the Property, or a Casualty Loss shall occur to all or any part of the Property,
26 Buyer shall have the option of (i) Closing under this Contract and receiving all of Seller's right to
27 obtain any compensation or damages awarded and/or allocated to the Property as a result of such
28 condemnation or eminent domain proceedings, or (ii) terminating this Contract. If this Contract is
29 terminated, the Parties shall be released of all obligations and the Deposit shall be delivered to Buyer,
30 such return being the sole recourse of the Buyer in the event of such termination.

31 10. Brokers' Commissions. Seller and Buyer warrant to each other that no persons, firms,
32 corporations or other entities are entitled to a real estate commission or other fees as a result of
33 this Contract or subsequent closing. Each party shall indemnify and hold the other party harmless

1 from any and all such claims, whether disclosed or undisclosed, based on the warranting party's
2 responsibility.

3 11. Default. In the event of a breach or default by Buyer under this Contract, the sole remedy of
4 the Seller, other than termination or cancellation of this Contract, and remediation or repair of all
5 damages to the Property resulting from or arising out of the Inspections, shall be liquidated at, and
6 limited to, the payment to the Seller, by the Escrow Agent, of the Deposit, the Parties agreeing that
7 the valuation of any damages to the Seller as a direct result of such breach or default would be
8 difficult, if not impossible, to determine at this time. In the event of a breach or default by Seller
9 under this Contract, the remedy and recourse of the Buyer, other than termination or cancellation of
10 this Contract, shall be limited solely to the return of the Deposit to Buyer by the Escrow Agent.

11 12. Assignment; Persons Bound. Buyer may not assign this Contract or Buyer's rights and
12 obligations hereunder without the written consent of Seller, which consent shall not be unreasonably
13 withheld. The provisions of this Contract shall bind and inure to the benefit of the Parties and their
14 respective heirs, personal representatives, successors and assigns, but shall not create any rights in
15 third parties.

16 13. Notices. Any notice, approval, consent or other communications ("Notices") permitted or
17 required under this Contract shall be effective only if in writing and given by hand delivery or by
18 mailing by certified or by registered mail, postage prepaid, return receipt requested, or by Federal
19 Express, other comparable expedited mail service, to the address of the Party set forth below or to
20 such other addresses as the Party to be notified may from time to time designate by notice given in
21 the manner provided in this Section. Notices shall be effective upon receipt, if hand delivered, or
22 upon deposit with Federal Express, other comparable expedited mail service, or in the United States
23 mail to:

24 If to Buyer: City of Tallahassee
25 Attn: City Manager
26 City Hall, Box A-21
27 300 South Adams Street
28 Tallahassee, Florida 32301
29

30 with a copy to: James R. English
31 City Attorney
32 City Hall, Box A-5
33 300 South Adams Street
34 Tallahassee, Florida 32301
35
36
37

Powerhouse
A05-096

18. Dates. If any date set forth herein for the performance of any obligations by Seller or Buyer or the delivery of any instrument or notice as herein provided should be on a Saturday, Sunday or legal holiday, the compliance with such obligations or delivery shall be deemed applicable to the next business day. As used herein, the term (a) "legal holiday" shall mean any state or federal holiday for which financial institutions or post offices are generally closed in the State of Florida for observance thereof, and (b) "business day" means a day other than a Saturday, Sunday or legal holiday.

19. Further Agreements of the Parties.

A. Further Agreement of the Parties Related to Conveyance of the City Property

(1) The Seller's deed conveying fee simple title to the Buyer of the City Property shall restrict the City Property to public, charitable and civic uses including conservation, passive or active recreation, community services, including utility service center(s), affordable housing and ancillary on-site uses and other uses which do not compete with development on Seller's retained lands as authorized in the Welaunee Critical Area Plan. The Buyer shall send any development application(s) for uses identified in this paragraph to the Seller for review and comment prior to submitting the application(s) to the City

Notwithstanding the above, the City Property may be developed with any other uses expressly allowed for the Toe property in the Welaunee Critical Area Plan as of the date of Seller's conveyance of the City Property to the Buyer but only if the Seller or Seller's assignee agrees to such use. The agreement by Seller or Seller's assignee shall be obtained in writing before any development applications for such other uses are submitted to the City.

The deed shall provide for the expiration of these restrictions/requirements upon the earlier of (i) build-out of Seller's retained lands in the Toe; or (ii) eight (8) years from the commencement of actual physical development of Seller's retained lands in the Toe; or (iii) twelve (12) years from the date of the Seller's conveyance of the City Property to the Buyer. Following the expiration of the restrictions, the Buyer may use the City Property for any use allowed by the approved Welaunee Critical Area Plan, as it may be amended.

(2) If affordable housing is developed on the City property, it shall meet the affordability threshold of the City of Tallahassee's inclusionary housing ordinance. At Seller's option, any such affordable housing may be credited on a unit-for-unit basis against any affordable housing obligation under the inclusionary housing ordinance for development on land in the Toe, Heel, or Arch retained by Seller, or by Seller's assignee on such land.

1 B. The Seller's deed conveying an easement to the Buyer over the property
2 described in Section 1.B.(1)(b) above shall be for the principal purpose of an overhead
3 transmission line and associated communications, including but not limited to construction,
4 operation, and maintenance of electric transmission lines, associated distribution facilities,
5 communications lines, and other City utility purposes, with multiple circuits on one set of
6 monopole structures, to Substation BP 14 per the Exhibit "A". The deed shall reflect this purpose
7 and allowance for other uses contingent upon approval by Seller or Seller's assignee to assure
8 compatibility with future uses on the Arch property. Buyer shall locate the above-ground
9 transmission line as follows:

10 (1) East of the Buckhead development, Segments OH-1 and OH-1A: No
11 more than 200 feet from the Welaunee-Buckhead boundary;

12 (2) North of the Buckhead development, Segment OH-2A: As close as
13 practical to the southern edge of the easement; and

14 (3) East of Centerville Road and south of BP-14: As close to the road as
15 possible in order to provide adequate buffering for future development.

16 Seller shall retain the right to plant vegetative buffers within these overhead transmission
17 easements, provided such buffers do not interfere with operation and maintenance of the
18 transmission facilities, and such other uses as allowed under this Agreement.

19 C. The Buyer will use its best efforts to support and encourage the scheduling and
20 funding of the four-laning of U.S. 90 from Dempsey Mayo Road to I-10 , anticipated to occur in
21 2009.

22 D. Buyer and Seller agree to amend the Urban Services-Development Agreement to
23 incorporate the terms set forth herein and to reflect allocation of the densities approved in the
24 Welaunee Critical Area Plan, as follows: Seller's retained lands in the Toe (approximately 489
25 acres) shall be allocated 1,283 residential units; 102,800 GSF of retail; 60,120SF of office; and
26 the City Property (approximately 428 acres) shall be allocated 1,429 residential units; 136,940
27 GSF of retail; and 135,810 GSF of office.

28 E. Seller agrees to reserve for road improvement a 120-foot wide right of way for
29 Welaunee Boulevard from Fleischman Road to the City Property with a 94-foot wide right-of-
30 way for segments in planned town or neighborhood centers, with a speed limit of 35 mph
31 consistent with a walkable mixed-use center, based on a location mutually agreed upon by the
32 Parties and consistent with the Welaunee Critical Area Plan. This right-of-way shall be dedicated

1 to the City of Tallahassee in conjunction with Seller's development of the Toe property. The
2 Seller's deed to the City shall grant to the Buyer the Seller's reserved perpetual, nonexclusive
3 easements in the Greenway from Miccosukee Road at Edenfield and Arendell Roads.

4 F. These Further Agreements of the Parties shall survive the Closing.

5 20. Fees and Costs. If either party is determined in a court of competent jurisdiction to
6 have breached this Contract, then the prevailing party shall be entitled to the reimbursement of its
7 reasonable attorneys' fees and court costs incurred in relation to such litigation.

8
9 IN WITNESS WHEREOF, the Parties have caused this instrument to be executed by their
10 duly authorized representatives effective the days and year written below.

11
12
13 Signed, sealed, and delivered
14 in the presence of:

15 _____
16 Print Name: _____

17
18 _____
19 Print Name: _____

20
21 Attest:

22 _____
23 Gary Herndon, City Treasurer-Clerk

24
25
26
27
28
29 _____
30 Print Name: _____

31
32 _____
33 Print name: _____
34
35
36
37

BUYER:
CITY OF TALLAHASSEE

By: _____
Anita R. Favors Thompson,
City Manager

Date: _____

Approved as to form:

City Attorney

SELLER:
POWERHOUSE, INC.

By: _____
Its: _____

Date: _____

1 STATE OF FLORIDA
2 COUNTY OF LEON
3

4 The foregoing instrument was acknowledged before me this ____ day of
5 _____, 2005, by Anita R. Favors Thompson, as the City Manager of the City of
6 Tallahassee, a Florida municipal corporation, on behalf of the City.
7

8 [NOTARIAL SEAL]

9 _____
10 NOTARY PUBLIC, State of Florida
11 My Commission Expires:
12

13 STATE OF FLORIDA
14 COUNTY OF _____
15

16 The foregoing instrument was acknowledged before me this ____ day of
17 _____, 2005, by _____, as the _____ of Powerhouse, Inc.,
18 on behalf of Powerhouse, Inc..
19

20 [NOTARIAL SEAL]

21 _____
22 NOTARY PUBLIC, State of Florida
My Commission Expires:

11/21/2005
5:15 PM

Attachment # 2
Page 45 of 48

Attachment #3

1
2
3
4

EXHIBIT "A"
[attach map with labeled portions]

Exhibit "B"
PERMITTED EXCEPTIONS

1. Drainage easement to be retained by Seller for post-development 100-year floodplain, along the Property line along the eastern and northern perimeters of Dove Pond, to facilitate stormwater management utilizing Dove Pond.
2. Natural gas pipeline easement crossing Seller's retained property in the Toe that will be crossed by Buyer's underground transmission line easement, if applicable.

11/21/2005
5:15 PM

Attachment # 2
Page 41 of 48

Attachment #3

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2
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Exhibit "C".

[attach map of portion of Welaunee Plantation not currently within the incorporated area
that is to be annexed into the City per condition 7.B.(1) of this Contract]

Exhibit "D"

AFFIDAVIT OF PUBLIC DISCLOSURE (FLA. STAT. §286.23)

The undersigned authority hereby affirms that he/she is:

President or Vice President of _____
_____ a corporation authorized to do business under the laws of
Florida, which holds title to the real property identified as Tax Parcel ID _____
and described in Exhibit "A" attached hereto and by this reference made a part hereof, and
hereby certifies that the names and addresses listed below are the names and addresses of every
person having a beneficial interest in said real property, however small or minimal, and do hereby
file this affidavit for the purpose of complying with the provisions of Section 286.23, Florida
Statutes.

Name	Address
------	---------

Affiant's Signature

Print or Type Affiant's Name

Affiant's Address

State of _____
County of _____

Sworn to and subscribed before me this _____ day of _____, 200__ by
_____ as _____ of
_____ on behalf of the Corporation, who is
personally known to me or who has produced _____
as identification.

Notary Public

Signature

(Print, type or stamp name of notary public)
[Seal]